Supreme Court, U.S.
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No 05-860

IN THE

Supreme Court of the United States

PETER J. MUTNICK, OTHERS – Petitioner(s)

VS.

CITY OF BERKELEY, ET AL. – Respondents

On Petition For Writ of Certiorari To
The Superior Court of the State of California
For the County of Alameda

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Primary Question:

If a state trial court denies a third-party motion for lack of jurisdiction because a supposedly exclusive procedure was not followed and then rules on the merits of the motion albeit in dicta after it is *functus officio* to do so, does that constitute a denial of due process under the Fourteenth Amendment, insofar as the improper part of the ruling was intended to and very likely had the effect of persuading the appellate courts that the jurisdictional issue was not worth considering since the motion was presumably without merit in the first place?

Related Questions:

If the holding and the dicta of the trial court were both untenable under state law and if the effect of the judgment was to deprive over 100,000 citizens of participation via speech, press, assembly, and petition in the most important decision their city will face for the next fifteen years, do any of these circumstances bear on the first question or otherwise violate due process under the Fourteenth Amendment?

If it had already been established as the law of the case by the ruling of the court on an earlier motion by another would be third-party that the procedure deemed exclusive by the trial court in the present motion was in fact not permitted under state law, does that violate either the Due Process Clause or the Equal Protection Clause of the Fourteenth Amendment?

Do all of these prejudicial irregularities, if proven to exist, constitute not only a miscarriage of justice, but a mass of confusion that should excuse any resulting confusion in the attempts of a "pro se" litigant to seek justice in this matter?

LIST OF PARTIES

All parties **do not** appear in the caption of the case on the cover page.

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

CITY OF BERKELEY, a municipal corporation, Petitioner / Plaintiff;

UNIVERSITY OF CALIFORNIA, BERKELEY; REGENTS OF THE UNIVERSITY OF CALIFORNIA; and DOES 1 THROUGH 50, inclusive, Respondents / Defendants;

CARL FRIBERG, and OTHERS, Third Party, Proposed Intervenor – Intervenor status denied – not presently a party to the case;

PETER J. MUTNICK, and OTHERS, Third Party, Proposer of Inquiry Into the Existence of Extrinsic Fraud in the Obtaining of the Voluntary Dismissal In This Case, with intent to intervene upon proof of the fraud.

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THE CONUNDRUM

It has been said that law is too important to be left to
lawyers and in matters having to do with rights of
participatory democracy, this is especially true,
for representatives are not kings for a season,
and autocratic behavior borders on treason.

If

We the People
Do not really know
What rights are bestowed
Upon us, if we do not know how
To cherish, defend, and protect them
Then how can we even truly possess them
Or exercise them or feel free to express them?

IN THE SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a Writ of Certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is unpublished.

JURISDICTION

The highest state court decided my case on October 12, 2005. A copy of that decision appears at Appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257.(a) and the interpretation thereof found in the following widely cited authority:

> *Crowell v. Randell,* 35 U.S. 368, 392 (1836):
>
> And here the doctrine of the court has been, that it is not indispensable that it should appear on the record, in totidem verbis, or by direct and positive statements, that the question was made and the decision given by the court below on the very point; but that it is sufficient, if it is clear, from the facts stated, by just and necessary inference, that the question was made, and that the court below must, in order to have arrived at the judgment pronounced by it, have come to the very decision of that question as indispensable to [the completeness or totality of] the judgment.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Constitution of the United States – Preamble; Article VI, Paragraph 2; 1st Amendment; 14th Amendment, Section 1.

Preamble:
We the People *of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.*

Supremacy Clause:
This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

Amendment I:
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment XIV, Section 1:
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Constitution of the State of California – Article 1, Sections 2.(a) and 3.(a)-(b).

Article 1, Section 2:

(a) Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press.

Article 1, Section 3:

(a) The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good.
(b) (1) The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.
(2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. A statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

[Part (b) added by amendment in 2004 by Proposition 59.]

United States Code – Title 28, Sections 1257.(a), 2106:

§1257.(a): Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is